

U.S. BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE:	:	
Shawn C. McGuire	:	Bankruptcy No.: 13-16141
	:	
	:	Chapter 13
Shawn C. McGuire	:	
26 West Roland Road	:	
Brookhaven, PA 19015	:	
	:	
Plaintiff	:	
v.	:	
HSBC Bank USA, National Association	:	
452 5 th Avenue	:	
New York, NY 10018	:	
	:	AP No.
Defendant	:	

**COMPLAINT TO DETERMINE VALIDITY OF LIEN HELD
BY HSBC BANK USA, NATIONAL ASSOCIATION, AS TRUSTEE FOR THE
HOLDERS OF THE ACE SECURITIES CORP. HOME EQUITY LOAN TRUST,
ASSET BACKED PASS-THROUGH CERTIFICATES SERIES 2006-CW1.**

I. Introduction

1. The instant complaint is filed by the Debtor-Plaintiff (hereinafter referred to as "Plaintiff") Shawn C. McGuire pursuant to Bankruptcy Rule 7001 to determine the extent and validity of any lien asserted by Defendant, HSBC Bank USA, National Association, As Trustee for the Holders of the Ace Securities Corp. Home Equity Loan Trust Asset Backed Pass-Through Certificate Series 2006-CW1 (hereinafter referred to as "Defendant") and pursuant to 11 U.S.C. § 506 to determine the extent to which Defendant, pursuant to a second mortgage on the property more fully described below may file a secured claim and the extent to which it is an unsecured claim; to declare that any such claim that may be filed by the Defendant pursuant to the aforesaid mortgage is unsecured, per 11 U.S.C. § 506, and praying that the Honorable Court enter an order, directing the Defendant to void and/or vacate the second mortgage held by the Defendant

upon the property of the Plaintiffs, and to have such voidance or vacation recorded with the Recorder of Deeds of Delaware County, Pennsylvania as such or as a satisfaction of mortgage.

II. Jurisdiction

2. Debtor-Plaintiff, Shawn C. McGuire, by and through his counsel, Brad J. Sadek, Esquire of Sadek and Cooper filed the present Chapter 13 case on July 12, 2013. This Court has jurisdiction over this proceeding pursuant to 28 U.S.C. §§157 and 1334. This matter is a core proceedings pursuant to 28 U.S.C. §157.

III. Parties

3. The Plaintiff is Shawn C. McGuire, a natural person, who resides at 26 West Roland Road, Brookhaven, PA 19015.

4. The Defendant is HSBC Bank USA, National Association, having a primary office to conduct business at 452 5th Avenue, New York, NY 10018.

5. The Trustee in the instant case is William C. Miller, Standing Chapter 13 Trustee for the United States Bankruptcy Court for the Eastern District of Pennsylvania, and Trustee in the Plaintiff-Debtor's Chapter 13 case.

IV. Allegations of Fact

6. The Plaintiff purchased the real estate situated at 26 West Roland Road, Brookhaven, PA 19015 (hereinafter referred to as "the property") on or about March 15, 2006, by way of first mortgage held currently held by HSBC Bank, US National Association and serviced by Nationstar Mortgage, LLC.

7. The subject second mortgage on the property was granted on or about March 15, 2006 in the original principal balance of \$31,980.00.

8. As of November 22, 2013, the first mortgage on the subject property in accordance with Proof of Claim number 9-1 filed by Nationstar Mortgage, LLC as “servicer” the secured claim was in the amount of \$177,584.84 **“Exhibit “A.”**

9. As of November 18, 2013, the second mortgage on the subject property in accordance with Proof of Claim number 8-1 filed by Nationstar Mortgage, LLC as “servicer” the claim was in the amount of \$53,266.89 **“Exhibit “B.”**

10. In accordance with Schedule “A” of the Debtor’s Bankruptcy, the Valuation Estimate of the property is \$124,234.00.

12. Plaintiff believes, and therefore avers, that the property is worth less than the payoff amount of the first mortgage on the premises.

13. Therefore the second mortgage held by the Defendant is now wholly unsecured.

14. Pursuant to 11 U.S.C. § 506, Plaintiff believes that the debt or obligation owed by the Plaintiffs to the Defendant by virtue of the aforementioned second mortgage upon Debtor’s real property should be reclassified by your Honorable Court as completely unsecured and any lien held by the Defendant against the property in question should be declared null and void.

WHEREFORE, Plaintiff, by and through his counsel Brad J. Sadek, Esquire of Sadek and Cooper pray this Court enter a verdict in favor of the Plaintiff and against Defendant, reclassifying any claim filed by the Defendant based upon the aforementioned second mortgage upon the premises, from secured to unsecured, striking or otherwise modifying any such Proof of Claim that is filed by the Defendant to show that the debt in question is wholly unsecured; and

ORDERING the Defendant to void or otherwise vacate the second mortgage on the premises of 26 West Roland Road, Brookhaven, PA 19015 and have such voidance or vacation recorded with the Recorder of Deeds of Delaware County, Pennsylvania or in the alternative, mark said mortgage as "satisfied" on the records of the Recorder of Deeds within thirty (30) days of the entry of the Order of your Honorable Court, and to deliver same to counsel for Plaintiff, at no cost or charge for such cancellation and/or delivery; and

Granting such relief as the Court may determine to be proper and just.

Respectfully submitted,

Sadek and Cooper

By: /s/ Brad J. Sadek, Esquire
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Date: February 10, 2014